

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

MATTHEW LEE SMITH,	:	CIVIL NO. 1:08-CV-0695
	:	
Petitioner	:	(Judge Caldwell)
	:	
v.	:	(Magistrate Judge Smyser)
	:	
COMMONWEALTH OF PENNSYLVANIA,	:	
et al.,	:	
	:	
Respondents	:	

REPORT AND RECOMMENDATION

The petitioner, a state prisoner, filed this 28 U.S.C. § 2254 petition for a writ of habeas corpus on April 14, 2008. The petitioner claims that the Commonwealth of Pennsylvania and the Court of Common Pleas of Armstrong County, Pennsylvania are refusing to grant him credit toward his sentence for time he served in pretrial detention.

By an Order dated April 28, 2008, we granted the petitioner's application to proceed *in forma pauperis*, we ordered that the petition be served on the Attorney General of the Commonwealth of Pennsylvania and we ordered that, on or before May 19, 2008, the respondent shall respond to the petition. There is no notation on the docket that the Clerk of Court actually served the Attorney General of Pennsylvania. The respondents have not filed a response to the petition.

Upon further review of the petition, we conclude that this case should be transferred to the United States District Court for the Western District of Pennsylvania.

A 28 U.S.C. § 2254 petition may be brought in the federal judicial district in which the state court of the conviction is located and, when the prisoner is confined in a prison located in another federal district in the same state as the state of conviction, the petition may be brought in the district of confinement. The district court for the district in which the petition is filed may transfer the petition to the district court for the district of conviction when to do so is in the interest of justice. 28 U.S.C. § 2241(d).

At the time he filed the instant petition, the petitioner was a prisoner at the State Correctional Institution at Frackville, which is in the Middle District of Pennsylvania. He was convicted in Armstrong County, which is in the Western District of Pennsylvania. He contends that the Court of Common Pleas of Armstrong County has refused to credit his sentence with the time he served in pretrial detention.

It will be in the interest of justice to transfer this petition to the United States District Court for the Western District of Pennsylvania. The United States District Courts

for Pennsylvania's three federal judicial districts have customarily transferred these petitions to the district of conviction. This custom achieves a desirable uniformity of approach among the three districts in the matter of exercising jurisdiction in these cases and serves the interests of the litigants in those cases where hearings are required.

Therefore, it is recommended that this case be transferred to the United States District Court for the Western District of Pennsylvania pursuant to 28 U.S.C. § 2241(d).

/s/ J. Andrew Smyser
J. Andrew Smyser
Magistrate Judge

Dated: June 10, 2008.